IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,

THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 2607 of 2005

Between:

1 Bharat Sanchar Nigam Ltd., Corporate office, Statesman
House, 4th floor, 148, Barakhamba Road,
New Delhi.
2 Bharat Sanchar Nigam Ltd., Maharasahtra Telecom Circle, New Admn.Building, Telecom Complex, Santa Cruz(W)
Juhu Danda, Mumbai-400054, Repn. by The Dy.General Manager (SP).

..... PETITIONERS

AND

1 M/s. Bhagyanagar Metals Limited, 5th floor, Surya Towers,Sardar patel Road, Secunderabad
rep.by its General Manager (Fin), Shri Radha Krishna Pillai.

2 Dr.Sri P.C.Rao, Hon'ble Arbitrator, Road No.12, Banjara Hills, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction, particularly one in the nature of writ of Mandamus to declare the order passed by Hon'ble single Judge dated 27-2-2004, in AA No.34/2003 as being illegal, null and void, and pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstance of the case.

Counsel for the Petitioners : MR.R.S.MURTHY

Counsel for the Respondent No.1: MR. S. RAVI.

Counsel for the respondent No.2: None appeared.

The Court made the following :

ORAL ORDER:

(per Hon'ble The Chief Justice)

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1. Order passed by learned single Judge allowing A.A.No.34 of 2003 filed by 1st respondent herein thereby making appointment of Dr. P.C.Rao as Sole Arbitrator for resolution of disputes between the parties is under challenge in this appeal by the petitioners.

2. The only point urged before us is as regards jurisdiction of this Court to entertain and decide the application filed by 1st respondent herein under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). Learned counsel for the petitioners submits that an objection was raised in reply filed to the application of 1st respondent that cause of action arose at Bharat Sanchar Nigam Limited Headquarters at New Delhi and as per Clause 30 of Tender Document, jurisdiction till the issue of purchase orders by the relevant circle will be at the appropriate Courts at Delhi/New Delhi, but subsequent to the issue of purchase order, the cause of action

arose at Bhopal since the office of Chief General Manager, Madhya Pradesh Telecom Circle is situated at Bhopal and accordingly the Court's jurisdiction for the applicant would be at Bhopal.

3. 1st respondent herein in his application had specially alleged that pursuant to Letter of Intents/Advance Purchase Orders earlier issued by the Department of Telecommunications, Bharat Sanchar Nigam Limited, the applicant was called upon to supply PIJF Cables of various sizes by the purchase orders. The communication with respect to grant of Letter of Intents in favour of the applicant as also communication with respect to the Purchaser Orders were received by the applicant at its registered office in Secunderabad. The contract envisaged manufacture of PIJF Cables at the applicant's factory in the State of Andhra Pradesh. The Contract also contemplated the inspection of the cables by the petitioners herein inter alia at the premises of the applicant. Thus the application for appointment of Arbitrator was made in this Court seeking adjudication of disputes. Applicant's case was that petitioner No.2 herein had arbitrarily withheld 0.3% of the invoice value in respect of the invoices raised against the supplies for various purchase orders. Applicant had taken up the stand that the amounts were withheld as transit insurance payment and proof thereof had not been given along with each supply bill. Applicant's case was that dispute arose within the jurisdiction of this Court and that therefore he approached this Court. Learned single Judge in his order culled out the question as to whether in the given facts situation, where the cause of action appears to be arising within the jurisdiction of more than one High Court, can this Court claim to have concurrent jurisdiction to entertain an application filed by the aggrieved party for appointment of an Arbitrator, and ultimately came to the conclusion that as per the provisions of the Act, 'Court' means principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of a suit, and in the instant case it is not that no cause of action arose within the jurisdiction of this Court. Cause of action did arose in the instant case since grant of Letter of Intents and placing of Purchase Orders were received at Secunderabad office. Manufacture of

cables was done within the State of Andhra Pradesh. Therefore, applicant was justified in invoking the concurrent jurisdiction of this Court, within which cause of action had definitely arisen.

4. Learned counsel for the petitioners placed reliance upon a decision of the Division Bench of Delhi High Court reported in **B.R. ELECTRICALS Vs. THE CHAIRMAN AND OTHERS (1)** which had decided about the question of jurisdiction. In this case learned single Judge declined to exercise the jurisdiction on the ground that Court had no jurisdiction. What was pleaded is lack of jurisdiction on the part of the Court to entertain and deal with the petition on the ground that no part of cause of action had arisen in Delhi and there was no written agreement, none of the alleged contracts contain an arbitration clause and it was concluded that no part of cause of action had arisen in Delhi.

5. In the instant case there is a definite finding by the learned single Judge that part of cause of action has arisen within the jurisdiction of this Court. Therefore, the decision relied upon by the learned counsel for the petitioners has no relevance. There is nothing wrong in

(1) 2003(1) ARB.LR 375 (Delhi) (DB).

the order of the learned single Judge appointing Arbitrator and there is no

force in the writ petition, which is accordingly dismissed. No costs.

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DEVINDER GUPTA. C.J.,

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GHULAM MOHAMMED. J.,

Dated: 24.02.2005.

VRK.

To

1. Dr.Sri P.C.Rao, Hon'ble Arbitrator, Road No.12, Banjara Hills, Hyderabad.

2. The General Manager (Fin.), M/s. Bhagyanagar Metals Limited, 5th floor, Surya Towers, Sardar Patel Road, Secunderabad.

3. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE GHULAM MOHAMMED.

W.P.NO. 2607 OF 2005.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 24.02.2005.